

REMARKS

The Office Action of August 18, 2008 has been received and its contents carefully noted. By this amendment, no claims have been amended, added, or canceled. Accordingly, claims 12, 15, 17-22, and 24-28 are currently pending in the application, of which claim 12 is an independent claim. Applicants respectfully submit that the following remarks place the application in condition for allowance or, alternatively, in better form for appeal. Accordingly, Applicants respectfully request entry of the present Amendment.

In view of the following remarks, Applicants submit that the claims are allowable and respectfully request reconsideration and timely withdrawal of the pending rejections for at least the reasons discussed below.

Applicants respectfully traverse the single ground for rejection provided in the outstanding Office Action. Specifically, Applicants traverse the rejection of claims 12, 15-22, and 24-28 under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent No. 6,679,250 issued to Walker et al. ("Walker"). Applicants submit that Walker does not disclose or render obvious each and every element of the invention set forth in any of the currently pending claims, for at least the following reasons.

Initially, Applicants respectfully submit that the Office Action is confusing and self-contradictory. The Office Action defines the connection port as the distribution cap 28 (see, e.g., page 3, ¶ 5, lines 4-5), but it also defines the connection port as the area that connects chamber 10 to chamber 25 (see, e.g., page 2, ¶ 1, lines 7-8 and see, e.g., page 3, ¶ 5, lines 2-3). Because the current Office Action contains different definitions of the connection port within the space of a few lines, it is difficult to determine exactly how the Examiner reads Walker onto the invention. Therefore, Applicants respectfully request that the finality of the current Office Action be retracted and that the next Office Action be made non-final as well.

The following remarks are based on Applicants' best efforts to understand the Examiner's rejection.

Rejections under 35 U.S.C. § 102(e)

Applicants respectfully traverse the rejection of claims 12, 15-22, and 24-28 under 35 U.S.C. § 102(e) as allegedly anticipated by Walker for at least the following reasons. Walker does not disclose or render obvious, *inter alia*, the following: a connection port proximate the bottom of the hollow body configured to connect to an external nebulization chamber, the connection port comprising a nebulizer inlet and a nebulizer outlet; and air flow path, defined by the hollow body and the baffle, having portions antiparallel to one another through an interior of the hollow body, as set forth, e.g., in independent claim 12.

A claim may be properly rejected under 35 U.S.C. § 102(e) if, and only if, a single prior art reference discloses each and every feature of the invention as recited in the claim. If the rejected claim recites even one feature that is not disclosed by the prior art reference, the 35 U.S.C. § 102(e) rejection is improper and must be withdrawn. In this case, the rejection of claim 12 must be withdrawn because Walker fails to disclose at least one feature recited in the independent claim 12.

For example, Walker fails to disclose a connection port proximate the bottom of a hollow body configured to connect to an external nebulization chamber, the connection port including a nebulizer inlet and a nebulizer outlet, as set forth, e.g., in independent claim 12. Whether the connection port is defined as the area between the breathalyzer chamber 10 and the container 25 or as the distribution cap 28, neither of these structures in Walker comprises a nebulizer inlet and a nebulizer outlet. In Walker, gas 31, such as air or oxygen, enters the container 25 at distribution cap 28 and exits the container 25 at one-way valve 20, which is located in the area between the breathalyzer chamber 10 and the container 25. The flow of gas in the nebulizer is from the cap 28, where the gas enters, to the valve 20, where the gas exits. See, e.g., Walker,

col. 5, lines 16-50. Depending on how the connection port is defined, the connection port in Walker includes either a nebulizer inlet or a nebulizer outlet but not both. Neither definition of the connection port includes both a nebulizer inlet and a nebulizer outlet.

In addition, Walker fails to disclose an air flow path having portions antiparallel to one another through an interior of a hollow body, as set forth, e.g., in independent claim 12. As stated above, the air flow in Walker is from the distribution cap 28 to the valve 20. If the area between the breathalyzer chamber 10 and the container 25 is defined as the connection port, as indicated in ¶ 1 of the Office Action, then the hollow body must be above the connection port. Under this reading, there is no baffle that creates an antiparallel airflow.

If the distribution cap 28 is taken to be analogous to the connection port, then baffle 32 may be regarded as a baffle at least partially disposed within the hollow body. Under this definition, however, the airflow defined by the hollow body and the baffle do not have any portions that are antiparallel. Antiparallel refers to vectors or other objects with directionality that are "parallel but oppositely directed." ("antiparallel." *WordNet*® 3.0. Princeton University. 19 Nov. 2008. <Dictionary.com <http://dictionary.reference.com/browse/antiparallel>>.) The airflow defined by the hollow body and the baffle exists only at the periphery of baffle 32, and this airflow is always toward valve 20 (see, e.g., Fig. 1). Thus it is not antiparallel but parallel.

Furthermore, neither definition of the connection port is configured to be connected to an external nebulization chamber, as set forth, e.g. in independent claim 12. If the distribution cap 28 is taken as the connection port, then the container 25, which forms part of the nebulizer in Walker, must be regarded as analogous to the hollow body of the invention because the connection port is proximate the bottom of the hollow body. As the distribution cap in Walker is configured only to receive gas 31 from a pump 30, it is not configured to be connected to an external nebulization chamber. If the area between the breathalyzer chamber 10 and the container 25 is defined as the connection port, then the nebulization chamber is not external. Under this definition, the nebulization chamber includes container 25, cap 26, and extends to

valve 20 (see, e.g. col. 5, lines 16-40). Thus, the connection port and at least part of the nebulization chamber are formed from a single, indivisible piece. Since the connection port and chamber are formed from the same unitary piece, the port is not configured to be connected to an external nebulization chamber. Rather, the connection port is always connected to at least part of the chamber.

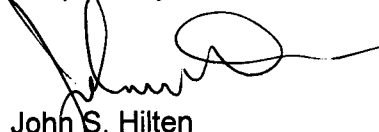
Since Walker fails to disclose each and every element recited in independent claim 12, Applicants respectfully request reconsideration and withdrawal of the rejection of independent claim 12 under 35 U.S.C. § 102(e) as allegedly anticipated by Walker in the next official communication. Furthermore, since claims 15, 17-22 and 24-28 depend from claim 12, these claims are, therefore, patentable for at least the reasons discussed above with respect to claim 12, as well as for reasons related to their own recitations. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 15, 17-22 and 24-28 under 35 U.S.C. § 102(e) as allegedly anticipated by Walker in the next official communication.

CONCLUSION

Applicants submit that a full and complete response has been made to the Office Action, mailed August 18, 2008, and respectfully submit that all of the stated grounds for rejection have been overcome or rendered moot. Accordingly, Applicants respectfully submit that all pending claims are patentably distinct from the cited documents and are in condition for allowance. The Examiner is thus respectfully requested to pass the above application to issue.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact the Applicants' undersigned representative at the number below to expedite prosecution. Prompt and favorable consideration of this Reply is respectfully requested. Applicant respectfully requests that a timely Notice of Allowance be issued for this application.

Respectfully submitted,



John S. Hilten
Reg. No. 52,518

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McGuireWoods LLP
1750 Tysons Boulevard
Suite 1800
McLean, VA 22102-4215
Tel: 703.712.5069
Fax: 703.712.5196

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